IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7058 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAK MAHADEV MARATHA

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 7058 of 2002

MS BANNA DUTTA FOR MS KD PARMAR for Petitioner No. 1

MR IM PANDYA, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/10/2002

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 19-4-2002 passed by the Police Commissioner, Ahmedabad City and he has been branded as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short

`the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, a representation dated 24-7-2002 has been sent by the advocate of the detenue and though said representation has been rejected on 1-8-2002, it was communicated to the detenu on 9-8-2002 and, therefore, there is a delay in considering the representation and communicating the same to detenu. Learned AGP has fairly admitted the same. She has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, a reply has been filed on behalf of the respondent No.1. Same is ordered to be

taken on record. It appears from para 4 of the reply that the representation dated 23-7-2002 made to the authority was rejected on 1-8-2002 and same has been communicated to the detenu on 9-8-2002. However, no explanation has been putforward by the authority explaining satisfactorily the delay caused in communicating the decision to the detenu. Since no satisfactory explanation has been putforth by the concerned authorities for not communicating the decision of rejection of his representation till 9-8-2002, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 19-4-2002 passed against the detenu Dipak Mahadev Maratha is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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